



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2004

Mr. Leonard Schneider
Ross, Banks, May, Cron & Cavin
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2004-5512

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204645.

The City of League City (the "city"), which you represent, received a request for incident reports #97-4813 and #98-4061. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address report #98-4061 in Exhibit A, which contains Texas motor vehicle information you wish to withhold under section 552.130. We note that Exhibit A includes an affidavit supporting a search warrant. Article 18.01 of the Code of Criminal Procedure provides in part the following:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 18.01(b). Thus, when a search warrant has been executed, the supporting search warrant affidavit must be released under article 18.01(b). Here, the submitted affidavit relates to a search warrant that has been executed; therefore, the search warrant affidavit is expressly public under article 18.01(b) of the Code of Criminal Procedure.

We will now consider whether any of the remaining information in Exhibit A is excepted under section 552.130 of the Government Code. You contend that section 552.130 excepts from release the Texas motor vehicle information in the search warrant affidavit. However, exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as article 18.01 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, none of the information in the search warrant affidavit may be withheld under section 552.130 and this document must be released without redaction.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Accordingly, you must withhold the Texas motor vehicle information we have marked in Exhibit A under section 552.130. The remaining information in Exhibit A must be released.

We next address report #97-4813 in Exhibit B. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy, which protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Information identifying the victim of a sexual assault is confidential under common law privacy. In particular, a governmental body must withhold an entire report regarding a sexual assault if identifying information in it is inextricably intertwined with other information that can be released or when the requestor knows the identity of the alleged victim. Open Records Decisions Nos. 393 (1983), 339 (1982); *see Morales v. Ellen*, 840 S.W.2d 519 (Tex.App.—El Paso 1992, writ denied); Open Records Decision No. 440 (1986). Here, the requestor includes the name of the alleged victim of a sexual assault in her request for information; thus, withholding only the identifying information from the requestor does not preserve the victim's common law right to privacy. Therefore, Exhibit B is confidential in

its entirety under the doctrine of common law privacy, and you must withhold it from disclosure under section 552.101.¹

In summary, the city must withhold the Texas motor vehicle information we have marked in Exhibit A under section 552.130. The remaining information in Exhibit A, including the entire search warrant affidavit, must be released. The city must withhold Exhibit B under section 552.101 in conjunction with common law privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹Because we dispose of Exhibit B under common law privacy, we do not address your alternate claims regarding the information at issue.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. David Floyd', with a stylized flourish at the end.

W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 204645

Enc. Submitted documents

c: Ms. Sandy Echols
Donna Brown Investigations & Research Service
424 Main Street
Liberty, Texas 77575
(w/o enclosures)